

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joseph S. and Delores K. Rodriquez,

Complainants,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 03-08-024
(Filed August 25, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING TELEPHONIC PREHEARING CONFERENCE**

Prehearing Conference

As previously noticed by the calendar clerk, a prehearing conference (PHC) will be held by telephone on:

Thursday, November 13, 2003, 10:00 a.m.

The calendar clerk's notice provides the parties with the conference call telephone number and password. Both the Complainants and the defendant must participate in the telephone conference call personally or through an authorized representative who is fully informed and prepared to discuss, with specificity, the party's contentions.

A PHC is a formal proceeding of the Commission and a court reporter will be present to record it and to prepare a transcript. The purpose of a PHC is to: (1) identify the parties and the parties' positions; (2) identify the factual and legal issues in dispute; and (3) set a date for evidentiary hearing, if one is to be held.

Focus of this PHC

As discussed in greater detail below, it appears to me that the Commission may lack jurisdiction to entertain this dispute. At the PHC, parties should be prepared to explain why the Commission should or should not dismiss this case without further action, or whether the Commission should require the parties to submit briefs on jurisdiction.

Summary of the Dispute

Review of the Complaint, Answer, and Amendment to Answer establishes the following. Complainants Joseph S. and Delores K. Rodriguez wish to extend electric service to real property they own at 130 Corey Road, Aromas, California, which is located in Monterey County. Complainants obtained a proposal for the extension (Attachment G to the Complaint) from Pacific Gas and Electric Company (PG&E) in March 2002 and thereafter executed it. However, PG&E has refused to proceed until Complainants provide PG&E with a necessary easement over an adjacent parcel, as required by Section 15 of the proposal, entitled “Land Rights”.

Complainants contend that the prior owners of the adjacent parcel (Paul and Helen Tripp) granted an easement to PG&E in 1974 (Attachment E to the Complaint) but that PG&E failed to record the document. Complainants contend that the 1974 easement from the Tripps was the *quid pro quo* for Complainants’ 1973 easement to PG&E, which was recorded and which enabled PG&E to extend service to a portion of the Tripps’ parcel. According to Complainants, the Tripps’ heirs, who are the current owners of the Tripp parcel, dispute the validity of the unrecorded easement.

Commission Jurisdiction

Public Utilities Code Section 1702 requires that a complaint set forth:

any act or thing done or omitted to be done by any public utility, including any rule or charge heretofore established or fixed by or for any public utility, in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission.

Complainants state that hearings are necessary to determine why PG&E failed to record the easement on or near the date it was executed and notarized. However, the Commission cannot examine factual issues such as these unless it has jurisdiction to decide the related legal issue or issues. In this case, the related legal issue is: “Did PG&E have an obligation under the law applicable at the time and enforceable by the Commission – whether the Public Utilities Code, a Commission decision, General Order or other rule, or PG&E’s tariff – to record the easement from the Tripps?”

The Commission lacks jurisdiction to determine rights in real property and cannot adjudicate the validity of the unrecorded easement. Therefore, at least two of the remedies Complainants seek are unavailable in this forum. The Commission cannot (1) order PG&E to record the 1974 easement, or (2) order PG&E to honor the 2002 service extension proposal, since that proposal requires Complainants to obtain a valid easement.

IT IS RULED that the telephonic prehearing conference will address the matters set out in the body of this ruling.

Dated October 27, 2003, at San Francisco, California.

/s/ JEAN VIETH

Jean Vieth
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Telephonic Prehearing Conference on all parties of record in this proceeding or their attorneys of record.

Dated October 27, 2003, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.